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November 29, 2004

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: June 23, 2004

Case Number: TSO-0118

This Decision concerns the eligibility of XXXXX (hereinafter referred to as "the individual") to hold an access authorization (also called a security clearance). The local DOE security office declined to grant the individual a clearance after determining that information in its possession created substantial doubt about the individual's eligibility for an access authorization under the Department of Energy (DOE) regulations set forth at 10 CFR Part 710, Subpart A, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, I have concluded that the individual should be granted access authorization.

Background

The individual works for a contractor at a DOE facility where some assignments require an access authorization. The local DOE security office issued a Notification Letter to the individual on June 23, 2003. The Notification Letter alleges that DOE has substantial doubt about the individual's eligibility for a clearance, based upon disqualifying criteria set forth in section 710.8, paragraphs (j) and (l).

The Notification Letter alleges that the individual is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse. This charge is based on an evaluation of the individual by a DOE consultant psychiatrist, on December 13, 2002. In his report dated December 14, 2002, the psychiatrist diagnosed the individual as suffering from Alcohol Abuse, without adequate evidence of rehabilitation or reformation. According to the psychiatrist's report, the individual would need a year of sobriety, plus outpatient treatment of moderate intensity, such as weekly attendance at Alcoholics Anonymous meetings, to provide adequate evidence of reformation or rehabilitation. The Notification Letter also alleges that the individual once pushed his former wife when he was intoxicated.

According to the Notification Letter, at the time of the DOE psychiatrist's evaluation, the individual was continuing to drink alcohol, and his blood tests in December 2002 showed certain elevated liver enzymes which might indicate that he was then drinking to excess. The Notification Letter also noted that in August 2002, the individual was in a fight at a bar after he had been drinking, and in 1999, the individual was arrested for DWI after an accident when his truck struck a utility pole. These are the bases for the security concerns in the Notification Letter.

Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing. The local DOE security office transmitted the hearing request to the Office of Hearings and Appeals (OHA), and the Director appointed me as Hearing Officer in this case. At the hearing I convened, the DOE Counsel called one witness, the DOE psychiatrist. The individual, who represented himself, testified on his own behalf, and called two other witnesses: his wife, and a co-worker. The DOE submitted eight written exhibits. The individual submitted a written answer to the charges in the Notification Letter, and introduced one written exhibit at the hearing, a letter of reference from his current supervisor.

Standard of Review

The applicable DOE regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 CFR § 710.7(a). In resolving questions about the individual's eligibility for access authorization, I must consider the relevant factors and circumstances connected with the individual's conduct. These factors are set out in section 710.7(c):

the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

A DOE administrative review proceeding under 10 CFR Part 710 is authorized when the existence of derogatory information leaves unresolved questions about an individual's eligibility for access authorization. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 CFR § 710.21(b)(6). Once DOE has presented derogatory information affecting an individual's eligibility for access authorization, the individual must come forward with evidence to convince DOE that restoring his or her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." *See, e.g., Personnel Security Hearing, Case No. VSO-0013, 24 DOE*

¶ 82,752 at 85,511 (1995), and cases cited therein. The DOE regulations were amended in 2001 to state that any doubt regarding an individual's eligibility for access authorization shall be resolved in favor of the national security. 10 CFR § 710.7(a). For the reasons discussed below, it is my opinion that the individual has resolved the concerns in the Notification Letter, and therefore he should be granted access authorization.

Findings of Fact

The individual did not dispute the allegations in the Notification Letter, although he did clarify the circumstances involved in several of the cited incidents. He maintained that he is rehabilitated and reformed, and no longer suffers from alcohol abuse, as he did according to the DOE psychiatrist's evaluation nearly two years before the hearing.

When DOE considered his eligibility for a clearance, the local security office was concerned that the individual had been arrested and charged with DWI in 1999, after he grazed a utility pole with his truck driving home from a club late at night. The individual admits to drinking two beers before the accident, but he claims that he was tired, not intoxicated, when it occurred. The police allegedly trailed the marks made by the individual's damaged wheel from the scene of the accident, and later arrested the individual in his yard while he was changing the tire that sideswiped the pole. The police found two loaded rifle cartridges in pocket of the jacket the individual was wearing at the time of his arrest. Although his blood alcohol level was tested at .08 percent (the legal limit) a few hours after his arrest, the individual attributes that result to drinking several beers after arriving home, parking his vehicle, and working on the tire. The DWI charge was later dropped because the police could not prove the individual actually drove while intoxicated.

DOE held two personnel security interviews (PSIs) with the individual that largely focused on his alcohol use, in light of the 1999 DWI arrest. The individual was quite forthcoming in these PSIs, and he volunteered a lot of information, including two family members with histories of problem drinking, a personal history of heavy drinking in high school (more than a decade before the hearing), an incident where he pushed his former wife during an argument, a high school-era fight where he fractured someone's jaw, and a fight in August 2002 after he had been drinking.

Testimony of the Witnesses at the Hearing

The DOE Psychiatrist's First Appearance

The DOE psychiatrist testified twice at the hearing. In his first appearance, the psychiatrist referred to his written evaluation, and explained the bases for his finding that the individual was suffering from Alcohol Abuse in December 2002. The psychiatrist found the individual had "persistent or recurrent social or interpersonal problems" related to drinking, including two fights, and shoving his former wife. The psychiatrist also considered the individual's 1999 DWI arrest, and his admission that there were other

times when he had driven after drinking. In addition, the psychiatrist noted that the individual had recently stopped drinking, then started again, and had two liver enzyme test levels that were slightly elevated, which could have indicated an ongoing alcohol problem. Considering all of these factors, the psychiatrist concluded that the individual met the diagnostic criteria for Alcohol Abuse at the time of the December 2002 evaluation. Hearing Transcript (hereinafter cited as “Tr.”) at 29-32.

The psychiatrist did not think the individual had shown adequate evidence of rehabilitation or reformation when he saw him in December 2002. This opinion was based on the fact that the individual was continuing to drink, and the psychiatrist’s “impression ... that he didn’t seem to think that he had a drinking problem, that he seemed to think it was overstated.” *Id.* at 34. To achieve rehabilitation or reformation, the psychiatrist recommended the individual maintain sobriety and participate in some kind of moderately intense outpatient treatment for a year, such as attending weekly Alcoholics Anonymous (AA) meetings. *Id.* at 36. If the individual did not pursue the recommended treatment, the psychiatrist said that he would want to know whether the individual had read his report, and why he chose not to follow the recommendation. The psychiatrist observed, however, that “it is possible to get rehabilitated or reformed on your own. The odds are much worse, and it would be difficult for me to assure an employer or DOE that the prognosis is very good, but I also have to throw in that it’s certainly possible that somebody can just decide to stop and they stop.” *Id.* at 38. The psychiatrist testified that he did not discuss his opinion, including the recommended treatment, with the individual. *Id.* at 39.

The Individual

At the outset, the individual testified that he knew nothing about the DOE psychiatrist’s evaluation before he received the Notification Letter on June 23, 2003, and did not receive a copy of the full report including the treatment recommendation until the DOE Counsel gave it to him in August 2004. *Id.* at 44-45. The individual next addressed some of the factual allegations in the Notification Letter that raised DOE’s concerns about his drinking and “unusual conduct.” The individual denied that he once pushed his former wife after he had been drinking. The individual emphasized that it was he who brought this information to DOE’s attention, and maintained that he was not drinking when the pushing incident occurred. According to the individual, “It was in a heated argument, and my ex-wife was a tad on the aggressive side...I was getting struck and so I pushed her away. It wasn’t act of—you know, of just abuse or anything like that...It was more of a defense.” *Id.* 46.

With respect to the rifle cartridges in his jacket pocket when he was arrested for DWI, the individual explained that when he got home and was trying to fix the tire, he went inside the house and put on “a heavy arctic Carhartt jacket” he last wore when on a deer hunting trip

and the bullets just happened to still be in the jacket. It wasn’t like I was out drinking with them. It wasn’t like there was any kind of firearms found in the

vehicle or anywhere on my person. It was, you know, there was some bullets in the bottom of a pocket of a jacket that's pretty substantial and that has quite a few pockets.

Id. at 47-48.

The individual next explained the circumstances of the two fights, one in high school, and the other in August 2002. The individual maintains that he has "never really started a fight," and would try to avoid getting into a fight if possible. *Id.* at 51, 75. The high school fight occurred when someone his age came into the individual's yard and was picking on his little brother. According to the individual, "things got elevated," and he came to his younger brother's defense. The individual threw only one punch, but the one punch apparently broke the assailant's jaw. The individual claims he had not been drinking when this fight occurred. *Id.*

The individual was dating his current wife at the time of the fight in August 2002. "We were at one of her best friend's house, and her husband had started making drinks—well, apparently, they were a little too stout for me...So when I got to the bar, I was getting intoxicated very fast..." The individual concedes that he "got too drunk that night," admits he threw the first punch, but claims he was defending his wife. According to the individual, there was a brief altercation inside the bar, but later in the parking lot, several people beat him up.

The individual claims that he has not been drunk again since the August 2002 incident. According to the individual, he now rarely consumes alcohol, and only drinks in moderation on those occasions. Within the four-month period immediately preceding the hearing, the individual drank alcohol twice--on his birthday, and at a friend's wedding. He no longer consumes any hard liquor, and he is careful never to drive after drinking. He does not ever intend to abuse alcohol or get drunk again. Aside from the fact that he was unaware of the DOE psychiatrist's recommendation that he attend AA meetings until shortly before the hearing, the individual "thought about it, but I thought it's not necessary." He does not have a lot of excess time for AA, because he has a lengthy commute between his home and workplace, he is busy remodeling his house, "and so it wasn't really a good option for me." According to the individual, "my main treatment is myself. I'm—I'm very strong-willed and I'm very honest." *Id.* at 53-56. The individual also pointed out that his two family members who had drinking problems were not blood relatives. Finally, the individual testified that he takes 800 mg. of ibuprofen every night for chronic joint pain, and raised the possibility that this medication may have contributed to his elevated liver enzyme levels on the December 2002 tests.

The Individual's Wife

The individual's wife testified that she understood how the DOE psychiatrist could have diagnosed her husband with Alcohol Abuse in December 2002. She explained the ways in which she thought the individual had changed his behavior to avoid abusing alcohol since the fight in August 2002: he has matured, he has "an acute awareness" of the

dangers associated with drinking, and he “puts our marriage first.” “But as far as personality, or anything like that,” she added, “nothing has changed. [The individual] is never going to be somebody he’s not.” *Id.* at 85. She praised the individual as being an honest, trustworthy person, who is hardworking, stable, and never moody. The individual’s wife trusts his judgment not to go to AA, and she prefers that he join her for Bible study instead. *Id.* at 87-89. She also stated that she is a nutritionist, and knows that the individual’s use of ibuprofen could have caused his elevated liver enzyme levels. *Id.*

The Individual’s Coworker

As a character witness, the individual called a coworker who, for the past three years, has worked for the same contractor at the DOE facility. The coworker testified that he has never seen the individual display any signs of alcohol abuse at their workplace, and characterized him as “a very professional individual.” *Id.* at 12. He has only seen the individual drink alcohol once, two years ago at a union awards banquet. The individual had “maybe two cocktails” during a two-hour period. The witness described the evening as “a very professional event that takes place. It’s a banquet. No one is going to go over there and, you know, get belligerent, drunk.” *Id.* at 14.

The DOE Psychiatrist’s Last Appearance

The DOE psychiatrist testified again, after listening to the other witnesses. He confirmed that ibuprofen could account for the slight elevation in the individual’s liver enzyme levels; however, he did not think it would be fruitful to retest the individual at this time. Based on the testimony at the hearing, the psychiatrist concluded that there now is adequate evidence of rehabilitation or reformation. He stated that “Certainly, right now, there is no active diagnosis of alcohol abuse.” *Id.* at 101. The psychiatrist noted that the individual had not seen the evaluation report until shortly before the hearing, and so had been unaware of its recommendation for treatment, rather than ignored it. He found that the individual had “gone a year or more without significant alcohol-related problems.” *Id.* at 102. The psychiatrist also observed that “the information presented has lessened the connection between drinking and violence that was available to me when I first saw him,” e.g., the individual was sober when he broke the kid’s jaw in his yard, and when he pushed his ex-wife. “That’s a lessening in his favor,” the psychiatrist concluded. *Id.* at 103. The psychiatrist reiterated that “the fact that he just decided to stop having problems, statistically, that probably is the most common way people stop drinking. They don’t go into treatment, they just stop.” *Id.* The psychiatrist concluded that given what he heard about what has transpired in the past year and ten months, treatment was not required, and the individual has shown adequate evidence of rehabilitation or reformation. *Id.* at 104-05.

Analysis

A diagnosis of Alcohol Abuse raises concerns regarding a person’s willingness or ability to protect classified information, and drinking to excess may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified

information. A history or pattern of alcohol-related arrests and fights creates doubt about a person's judgment, reliability and trustworthiness. DOE had a substantial basis in the record for raising these concerns. Upon consideration of the evidence presented at the hearing, however, I find that the individual has mitigated all of the concerns in the Notification Letter.

I place the greatest weight on the DOE psychiatrist's expert opinion that the individual has shown adequate evidence of rehabilitation or reformation, he no longer suffers from Alcohol Abuse, and no further treatment is required. The record shows that the individual had no knowledge of the psychiatrist's treatment recommendation until shortly before the hearing, and that is why he did not enroll in AA. In addition, the individual's explanation of several incidents lessened the concern about the connection between his drinking and violence. For example, the individual testified credibly that he had not been drinking before the fight in his yard (which occurred well over a decade ago) where he broke someone's jaw, nor had he been drinking before he pushed his ex-wife during an argument. The bullets found in the individual's pocket at the time of his 1999 arrest were left in that jacket from a deer hunting trip. The individual had not been wearing that jacket (nor carrying a weapon) before grazing a utility pole on his way home from a nightclub. The individual takes large doses of ibuprofen nightly for chronic joint pain, which could explain his slightly elevated liver enzyme tests in December 2002. I am also persuaded that the individual consciously changed his behavior after the August 2002 bar fight. I find the individual and his wife gave credible testimony that he has not been intoxicated since August 2002, more than two years before the hearing. The individual has a stable relationship with his new wife. Through maturation and self-discipline, the individual has transformed himself from a one-time alcohol abuser into an occasional moderate drinker. As the DOE psychiatrist noted, most problem drinkers who reform their behavior do so on their own, without the benefit of treatment, by simply deciding not to get drunk any more. I agree with the DOE psychiatrist that this individual has achieved that goal.

Conclusion

Based on the record in this proceeding, I find that the individual has resolved the security concerns under 10 CFR §§ 710.8(j) and (l) that were specified in the Notification Letter. For the reasons explained in this Decision, I find the individual shown that granting him access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, it is my decision that the individual should be granted access authorization.

Thomas O. Mann
Hearing Officer
Office of Hearings and Appeals

Date: November 29, 2004